WP(C) 5882/2006
BEFORE

THE HON'BLE MR. JUSTICE RANJAN GOGOI

An order dated 30.10.2006 passed by the Registrar of the Dibrugarh University imposing the punishment of compulsory retirement on the petitioner has been assailed in the writ petition.

2. The writ petitioner, at the relevant point of time, was working as an Upper Division Assistant and was posted in the Finance & Accounts Branch, Section 'A' of the University. On 30.09.2004, a charge-memo was furnished to the petitioner levelling two charges against him. The first charge, read with the statements of allegations in support thereof, pertained to the misbehaviour and indiscipline allegedly committed by the petitioner under the influence of liquor during office hours on 28.6.2004. The second charge is to the effect that in the statement of accounts of the University's contribution to the Provident Fund of eligible employees including the petitioner, the Bank Account mentioned was the personal account of the petitioner instead of the joint account of the Registrar and the beneficiary, i.e., the petitioner. The further allegation is that the petitioner, by virtue of being posted in the Finance and Accounts Branch, committed the aforesaid act and in this manner the University's contribution to the Provident Fund Account of the petitioner to the extent of Rs.28, 280.00 got credited into the petitioner's personal account thereby resulting in misappropriation of the said amount by the petitioner.

3. On receipt of the charge-memo, the petitioner filed his reply thereto and thereafter took part in the enquiry, which was conducted by an Enquiry Committee consisting of three Professors of the University. As evident from the records of the enquiry, which have been enclosed to the writ petition, the petitioners participated in the enquiry held and had cross-examined the witnesses examined in support of the charges. The statement of the petitioner was also recorded in the course of the enquiry held. Thereafter, the Enquiry Committee submitted its report dated 16.1.2006 holding both the charges levelled against the petitioner to be proved. The petitioner was furnished with a copy of the enquiry report and also the statements of the witnesses recorded in the course of the enquiry. On the said basis, the petitioner tried to persuade the disciplinary authority not to hold him to be guilty of the charges leveled. The disciplinary authority, however, by the impugned order dated 30.10.2006 has imposed the punishment of compulsory retirement giving rise to the present writ petition.

4. The argument advanced by Sri BK Bhattacharyya, learned counsel for the petitioner is basically two-fold. Learned counsel has contended that, on the materials available on record, the first charge cannot be said to have been established so as to warrant the findings recorded and the punishment imposed. In so far as the second charge is concerned, Sri Bhattacharyya has argued that the wrong mention of the personal account number of the petitioner in the statement of accounts is an unintentional lapse on the part of the petitioner, which, at best, is an irregularity. However, as the said money represented the University's contribution to the Provident Fund Account of the petitioner and the money really belonged to the petitioner and would have come to him in due course, there can be no misappropriation thereof, as alleged. The second limb of the argument advanced by Sri BK Bhattacharyya, learned counsel for the petitioner has been with regard to the severity of the punishment imposed, which, according to the learned counsel is grossly disproportionate, even if the charges are held to be proved. Consequently, in the alternative, interference of the Court, on the said basis, has also been prayed for.

5. In reply, Sri K. Agarwal, learned counsel for the University has vehemently contended that the materials on record clearly establish that the petitioner has a previous record of commission of irregularities in maintenance of accounts leading to over drawal of money under the salary head. Sri Agarwal has pointed out that though the aforesaid charge against the petitioner was proved in an earlier departmental proceeding, the petitioner had prayed for leniency and the University had thought it fit to take a liberal view of the matter. Yet the petiti

oner had not reformed himself. Sri Agarwal has further argued that the evidence and materials on record conclusively prove and establish that on 28.6.2004 the petitioner had consumed alcohol during office hours and, thereafter, had misbehaved in the office. Sri Agarwal has further argued that the [petitioner had taken advantage of his posting in the Accounts Branch to manipulate the statements of accounts by inserting his personal bank account number in the said statement. The petitioner had persisted in such conduct over a fairly long period of time and had obtained undue benefit to the extent of Rs.20, 280.00. In view of the previous conduct of the petitioner, according to Sri Agarwal, the punishment imposed is just, fair and commensurate with the gravity of the charges proved.

6. The rival contentions advanced on behalf of the respective parties have received the due and anxious consideration of the Court. A reading of the statements of the witnesses examined in course of the enquiry would go to show that out of the 8(eight) witnesses examined, 6(six) witnesses had clearly deposed with regard to the exhibition of unruly behaviour by the petitioner on 28.6.29004. Two of the aforesaid six witnesses had deposed that they had found the petitioner drunk. The remaining two witnesses, who did not specifically support the charges levelled, however, admitted that there was shouting and commotion coming from the room whether the petitioner used to work. On these materials, the Court is of the view that the charge of misbehaviour under the influence of liquor had been conclusivelyproved in the enquiry held against the petitioner.

7. In so far as the second charge is concerned, there can be no manner of doubt that the action of the petitioner over a fairly long period of time, i.e., several months in putting his personal bank account number instead of the joint account number in the statement of account pertaining to the University’s contribution to Provident Fund, which fact is virtually admitted, constitutes a serious irregularity and lapse on the part of the petitioner. However, the Court must take note of the fact that the second charge is one of misappropriation. There is no dispute that in the long run the said amount would have come to the petitioner. In such a situation, the Court is of the view that though the petitioner was guilty of serious lapses and gross irregularities, it would not be correct to hold him guilty of misappropriation in the strict sense of the term.

8. This will bring the Court to a consideration of the question of the adequacy of the punishment imposed. What punishment should be imposed on an erring employee is really for the employer to decide. The Courts normally do not interfere in such matters unless the punishment imposed is grossly excessive and disproportionate. In the present case, the charge of consumption of alcohol and misbehaviour, it must be noticed, was in respect of one single day, i.e., 28.6.2004. It is not the University’s case that the petitioner had consistently or persistently engaged in such conduct. In so far as the second charge is concerned, the Court has already held that on the materials available, the petitioner should be held guilty of commission of a serious lapse and gross irregularities but not of misappropriation. In this regard the Court must also take note of the fact that the irregularity committed by the petitioner is in respect of his own bank account number and not in respect of the other employees for whom provident fund money was also contributed and reflected in the same statement of accounts. If the petitioner had entertained any fraudulent and dishonest intention the Bank Accounts of the other employees could also have been altered by the petitioner, which, however, was not done. These are some of the features of the case, which the judicial balance has to weigh before taking the final decision with regard to the justifiability of the quantum of punishment imposed. The reformative purpose behind the imposition of a punishment should not be lost sight of in the above noted circumstances. Further, that even in a highly disciplined force, i.e., the Army irreversible disciplinary action follows three red ink entries in the service profile of a soldier must also be kept in mind. On consideration of all the aforesaid facts and circumstances, the Court is of the view that in the present case it would be just and fair to hold that the punishment of compulsory retirement, which will result in cessation of service, should require the Court’s interference. Consequently, the impugned order dated 30.10.2006 imposing the punishment of compulsory retirement is interfered with leaving it open to the University

to impose such lesser punishment, as it may consider just and appropriate. The Court has noticed that certain usual species of punishments that are provided for in many other Service Rules are not included in the Dibrugarh University Employees' Service Conditions Ordinance, 2000. If the University so desires an amendment to the said Ordinance may be made and in the light of the amendment so made a lesser punishment may be imposed on the petitioner in terms of the present order.

Writ Petition consequently is allowed to the extent indicated above.